Jururaya Engineering Sdn Bhd v Lau Chee Weng & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A-02-42 OF 1996
NH CHAN, ABU MANSOR AND AHMAD FAIRUZ JJCA
11 MAY 1999

Banking *— Cheque — Authorized signatories — Variation by way of resolution — Bank honoured cheque in accordance with amended resolution — Whether bank liable — Whether duty of care extended a non customer*

The plaintiff was a sub-contractor of Asha Construction. Pursuant to an agreement, a joint current account was opened by Asha Construction with the third defendant bank with the plaintiff naming Mr Lim Mok Guan as a signatory to all cheques. On 26 April 1993, Asha Construction filed a second resolution to the bank specifying that all Asha's cheques were to be signed by joint signatories of two individuals from group A and one from group B. Those from group A were as follows: (i) Mr Ahmad Sanusi bin Mohammad Said; (ii) Mr Mohd Nizer bin Abdullah; and (iii) Mr Mohd Isa bin Ibrahim; and those from group B were: (i) Mr Lim Mok Guan; and (ii) Mr Mohd Zaini bin Mohd Said. The resolution was signed by the directors of Asha in accordance with s 90 of the articles of association of Asha Construction (M) Sdn Bhd. The issue was whether the third defendant bank can be held liable in damages to the plaintiff for having honoured a cheque for the amount of RM850,000 dated 17 May 1993 drawn by Asha Construction ('the cheque'), which had omitted Lim Mok Guan as a signatory in the cheque, the said Lim was representing the plaintiff company. The learned judge dismissed the claim and hence this appeal.

Held, dismissing the appeal:

The bank acted on the second resolution when it honoured the cheque. There was no banker customer relationship between the plaintiff and the defendants, and the third defendant bank owed no duty whatsoever to the plaintiff, who was not their customer (see p 128F–G). Any allegation of mistake raised by the plaintiff, in regard to the conduct of the defendant in honouring the cheque was without foundation (see p 128H–I).

[Bahasa Malaysia summary

Plaintif adalah sub-kontraktor Asha Construction. Selaras dengan suatu perjanjian, suatu akaun semasa bersama telah dibuka oleh Asha Construction dengan defendan ketiga iaitu bank dengan plaintif menamakan En Lim Mok Guan sebagai penandatangan kepada semua cek-cek. Pada 26 April 1993, Asha Construction telah memfailkan resolusi yang kedua kepada bank dengan menetapkan

bahawa semua cek-cek Asha akan ditandatangani oleh penandatangan bersama oleh dua individu daripada kumpulan A dan satu daripada kumpulan B. Mereka yang dari kumpulan A adalah seperti berikut: (i) En Ahmad Sanusi bin Mohammad Said; (ii) En Mohd Nizer bin Abdullah; dan (iii) En Mohd Isa bin Ibrahim; dan mereka yang dari kumpulan B adalah: (i) En Lim Mok Guan; dan (ii) En Mohd Zaini bin Mohd Said. Resolusi tersebut telah ditandatangani oleh pengarah-pengarah Asha menurut s 90 perkara-perkara persatuan Asha Construction (M) Sdn Bhd. Isunya adalah sama ada defendan ketiga iaitu bank boleh diputuskan sebagai bertanggungan dari segi ganti rugi kepada plaintif kerana telah menunaikan cek untuk jumlah RM850,000 bertarikh 17 Mei 1993 yang telah dikeluarkan oleh Asha Construction ('cek tersebut'), yang telah ketinggalan nama Lim Mok Guan sebagai penandatangan di dalam cek; Lim adalah mewakili syarikat plaintif. Hakim yang arif telah menolak tuntutan tersebut dan timbul rayuan ini.

Diputuskan, menolak rayuan:

Bank tersebut telah bertindak berdasarkan resolusi yang kedua tersebut semasa menunaikan cek tersebut. Tiada hubungan bank dan pelanggan antara plaintif dan defendan-defendan, dan defendan ketiga iaitu bank tiada sebarang tugas kepada plaintif, yang bukan pelanggan mereka (lihat ms 128F–G). Apa-apa pengataan kesilapan yang dibangkitkan oleh plaintif, berkenaan dengan kelakuan defendan di dalam menunaikan cek tersebut adalah tanpa asas (lihat ms 128H–I).]

Notes

For cases on cheques, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1410–1420 and 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 696–739.

Appeal from: Civil Suit No 22–135–1993 (High Court, Ipoh)

Wiswanathan (*V Ganesan* with him) (*PM Mahalingan & Co*) for the appellant.

A Silvanathan (*Shanti Sankey* with him) (*Kean Chye & Sivalingam*) for the respondent.

Abu Mansor JCA (delivering judgment of the court): We heard this appeal on 17 April 1998. After a short argument, we came to the conclusion we agreed with the decicion of the learned judge below that the appellant/plaintiff's claim be dismissed with costs to the respondent.

The principal point raised by this appeal is whether the third respondent bank can be held liable in damages to the plaintiff for having honoured a cheque for the amount of RM850,000 dated 17 May 1993 drawn by the bank's customer Asha Construction, a private limited company, the bank having acted on an amended resolution of Asha

Construction which had omitted a former signatory of one Lim Mok Guan in the said cheque, the said Lim was representing the plaintiff company. A

The facts of the case were as follows. The plaintiff was a sub-contractor of Asha Construction in a building project to construct and complete 96 units of G quarters in Hospital Bahagia, Ulu Kinta, Perak.

One of the terms of their agreement was that Asha was required to open an account at a commercial bank in Ipoh for their joint operation. Pursuant to this agreement a joint current account was opened by Asha Construction with the third defendant bank with the plaintiff naming Mr Lim Mok Guan as a signatory to all cheques in conjunction with En Ahmad Sanusi bin Mohammad Said or En Mohd Zaini bin Mohamad Said named in the resolution of Asha dated 30 March 1992. Such resolution to remain in force until amended. B C

On 26 April 1993, Asha Construction filed a second resolution to the bank specifying that all Asha's cheques were to be signed by joint signatories of two individuals from group A and one from group B. Those from group A were as follows: D

(1) Mr Ahmad Sanusi bin Mohammad Said;

(2) Mr Mohd Nizer bin Abdullah;

(3) Mr Mohd Isa bin Ibrahim

and those from group B were: E

(1) Mr Lim Mok Guan;

(2) Mr Mohd Zaini bin Mohd Said.

The resolution was signed by the directors of Asha in accordance with s 90 of the articles of association of Asha Construction (M) Sdn Bhd. F

It was clear to us that the bank acted on this second resolution when it honoured the cheque of RM850,000 dated 7 May 1993.

We upheld the contention of the defendant that there was no banker customer relationship between the plaintiff and the defendants and the third defendant bank owed no duty whatsoever, to the plaintiff, who was not their customer. There is no gain saying that their customer was Asha Construction (M) Sdn Bhd using account number 0105129629 and acting in accordance with the instruction of the customer, Asha Construction (M) Sdn Bhd a cheque of that amount was paid into Asha's account at Kwong Yik Bank. G H

We agree with the judgment of the learned judge when he said p 229 of the appeal record:

> After having heard the evidence of the witnesses of the plaintiff and the defendants and bearing in mind the surrounding circumstances, I am of the view that any allegations of mistake raised by the plaintiff, in regard to the conduct of the defendant, in honouring the cheque of RM850,000, was without foundation. I

A We were of the unanimous view the learned judge had not erred and we affirm his decision to dismiss plaintiff's case. We therefore hereby dismissed the appellant's appeal with costs.

Appeal dismissed.

B Reported by Benjamin Yong

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